

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

YOLANDA DOWNER

PLAINTIFF

V.

NO. 4:20cv041-SA-JMV

THE KROGER CO., AND KROGER LIMITED
PARTNERSHIP I, and JOHN DOES 1-10

DEFENDANTS

NOTICE OF REMOVAL

COME NOW, Defendants, Kroger Limited Partnership I and The Kroger Co. (hereinafter collectively “Kroger”), by and through counsel, Bill Luckett of Luckett Law Firm, P.A., and file and serve their Notice of Removal of that certain civil action pending in the Circuit Court of Bolivar County, Second Judicial District, Mississippi, styled Yolanda Downer vs. The Kroger Co. And Kroger Limited Partnership I and John Does 1-10, Civil Action No. 2019-88 on the general docket of said court to the United States District Court for the Northern District of Mississippi, Greenville Division.

The above entitled suit was initially filed on November 24, 2019. An Amended Complaint was then filed on February 14, 2020. Process was effected on The Kroger Co. by service upon Corporation Service Company located in Jackson, Mississippi on February 17, 2020. Said suit is of the civil nature of which the district courts of the United States have original jurisdiction pursuant to 28 U.S.C. Section 1332(a)(1) as the suit is between citizens of different states and the matter in controversy exceeds \$75,000.00 exclusive of interest and costs. As alleged in the Complaint, the Plaintiff is a resident citizen of the state of Mississippi. Kroger Limited Partnership I and The Kroger Co. are both out of state corporations. Kroger Limited Partnership I is an Ohio limited

partnership comprised of two partners - General Partner, KRGP Inc., and Limited Partner, The Kroger Co. KRGP Inc. and The Kroger Co. are Ohio corporations. Both Defendants and KRGP Inc. have their principal places of business in Cincinnati, Ohio. Thus, both Kroger Limited Partnership I (and its partners) and The Kroger Co. are resident citizens of states other than the state of Mississippi. Thus, for removal purposes, both are resident citizens of Ohio. The real controversy in said suit is, and at the time of commencement thereof was, and all times since, has been a controversy between citizens of different states. There is therefore complete diversity of citizenship between the Plaintiff and the Defendant. Pursuant to 28 U.S.C. Section 1441(a) the citizenship of John Does 1-10 shall be disregarded for purposes of removal.

The Plaintiff has failed to allege a specific amount in controversy. Where a plaintiff fails to allege a specific amount in controversy, the court may make a "facially apparent" determination by looking only at the face of the complaint and asking whether the amount in controversy is likely to exceed the requisite jurisdictional amount as required for diversity of jurisdiction. Allen v. R&H Oil & Gas Co., 63 F.3d 1336 (5th Cir. 1995).

In paragraph 20 of Plaintiff's Amended Complaint, she seeks compensation for "...injuries to her rights knee, pain and suffering, mental, emotional and psychological injuries, permanent impairment, and loss of enjoyment of life. The Amended Complaint goes on in paragraph 21 to state that Plaintiff has suffered economic damages for actual and constructive costs associated with the diagnosis, care and treatment of her injuries, as well as non-economic damages for her "pain and suffering, mental, emotional and psychological damages, physical impairment and loss of enjoyment of life." Plaintiff also states in paragraph 21 of the Amended Complaint that "It is anticipated that

Plaintiff will continue to suffer future and economic and non-economic damages.”

Based on the foregoing facts, the real amount in controversy exceeds \$75,000.00, exclusive of interest and costs. The real controversy in said suit is, and at the time of commencement thereof was, and at all times since, has been a controversy between citizens of different states. Therefore, the U.S. District Court for the Northern District of Mississippi, Aberdeen Division has original jurisdiction.

Respectfully submitted,

KROGER LIMITED PARTNERSHIP I
AND THE KROGER CO.

s/Bill Lockett

BILL LUCKETT
MISSISSIPPI BAR NO. 1487
wol@lockettlawfirm.com
LUCKETT LAW FIRM, P.A.
143 YAZOO AVENUE
POST OFFICE DRAWER 1000
CLARKSDALE, MISSISSIPPI 38614
(662) 624-2591
FAX - (662) 627-5403

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2020, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following: ***S. David Norquist, Esquire.***

s/Bill Lockett

BILL LUCKETT